

Decision Notice



Decision 178/2011 Mr Michael Campbell and City of Edinburgh Council

Failure to respond to request and requirement for review

Reference No: 201101325
Decision Date: 24 August 2011

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Kevin Dunion
Scottish Information Commissioner

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Summary

This decision considers whether City of Edinburgh Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Campbell.

Background

1. On 1 April 2011, Mrs Jackie Campbell, on behalf of her son Mr Michael Campbell, wrote to the Council requesting information in respect of a specific Statutory Notice issued by the Council. In particular, she requested “a copy of the scope of work, quotation, costings and timescale at that time as promised”.
2. Subsequent references to correspondence to and from Mr Campbell should be read as correspondence to and from Mrs Campbell on his behalf.
3. The Council did not respond to this request and on 10 May 2011 Mr Campbell wrote to the Council requesting a review of its handling of his request.
4. On 11 May 2011 the Council wrote to acknowledge Mr Campbell’s request for review, indicating that a response would be supplied within 20 working days. However, the Council did not provide any response within that period. Mr Campbell wrote again on 15 June 2011 to remind the Council that a response remained outstanding.
5. On 20 July 2011 Mr Campbell wrote to the Commissioner, stating that he was dissatisfied with the Council's failure to respond and applying for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Campbell had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.
7. The case was then allocated to an investigating officer.



Investigation

8. On 22 July 2011, the Council was notified in writing that an application had been received from Mr Campbell and was invited to comment on the application as required by section 49(3)(a) of FOISA.
9. The Council responded on 4 August 2011, accepting that it had failed to carry out a review of Mr Campbell's original request, and stating that a review would be carried out shortly.
10. Following further telephone calls to the Council, the investigating officer emailed the Council on 17 August 2011 to ask why no review response had yet been issued to Mr Campbell. The Council responded on the same day, indicating that a review had been conducted and a response would be issued later that day.
11. Later on 17 August 2011, the Council issued a letter to Mr Campbell, purporting to notify him of the outcome of its review. The Council apologised for the delay in responding to Mr Campbell's request for review, and explained that it had been receiving a high number of requests for information about statutory notices.
12. The Council acknowledged that it had failed to respond to Mr Campbell's information request within the statutory timescale, and that a response had still not been supplied. It recognised that this was wholly unacceptable, and indicated that a review of procedures would be undertaken to ensure that this did not happen again.
13. The Council indicated that Mr Campbell's information request would be referred back to the department which holds, or is most likely to hold, the information he had requested. The Council stated that once the relevant department had analysed each piece of the withheld information a formal response would be issued.

Commissioner's analysis and findings

14. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
15. In this case, the Council did not respond to Mr Campbell's information request of 1 April 2011 within 20 working days (and, so far as the Commissioner is aware, it still had not supplied any substantive response at the time of issuing this decision). The Commissioner therefore finds that the Council failed to respond to Mr Campbell's request for information within the 20 working days allowed by section 10(1) of FOISA.



16. Section 21(1) of FOISA gives authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant in this case.
17. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it relates:
 - a. confirm a decision complained of, with or without such modifications as it considers appropriate;
 - b. substitute for any such decision a different decision; or
 - c. reach a decision, where the complaint is that no decision had been reached.
18. It is the Commissioner's view, where no response has been made to an information request, the first two options are unavailable to the authority, and so the only appropriate review outcome in a case such as this is for the authority to reach a decision where none has been reached before, in line with section 21(4)(c) of FOISA.
19. The Commissioner has considered the content of the Council's response to Mr Campbell's request for review, which was sent to him on 17 August 2011. He has noted its review did not do any of the things listed in section 21(4) of FOISA. Instead, it simply acknowledged that the request had received no response, apologised for this failure, and indicated that a response would be provided in due course. The Commissioner is unable to accept that this response met the requirements of section 21(4) of FOISA.
20. Therefore the Commissioner finds that the Council failed to carry out a review in line with section 21 of FOISA, and, in particular, sections 21(4) and (5) of FOISA, within the 20 working days allowed by section 21(1) of FOISA. He is of the view that a substantive outcome to Mr Campbell's requirement for review remains outstanding.
21. The Commissioner is aware that the Council has received a large number of requests for information concerning statutory notices in recent months, and he welcomes the Council's comments indicating that it will review its procedures to avoid failures of the type shown in this case in future. However, he would remind the Council that where a request for review is received following a failure to respond, what is required of it is simply to provide a response to the original request. A process which recognises and apologises for the failure to respond, but does not rectify this failure, does not constitute a review for the purposes of section 21 of FOISA, and so is unacceptable.



DECISION

The Commissioner finds that City of Edinburgh Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Campbell, in particular by failing to respond to Mr Campbell's request for information within the timescale laid down by section 10(1) and by failing to carry out a review in line with section 21(4) and (5) of FOISA within the timescale required by section 21(1).

In order to comply with Part 1 of FOISA, the Commissioner now requires the Council to comply with Mr Campbell's requirement for review, in accordance with section 21(4), and to notify him of the outcome of that review in accordance with section 21(5), by 13 October 2011.

Appeal

Should either Mr Campbell or the Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Claire Sigsworth
Deputy Head of Enforcement
24 August 2011



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (4) The authority may, as respects the request for information to which the requirement relates-

- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
- (b) substitute for any such decision a different decision; or
- (c) reach a decision, where the complaint is that no decision had been reached.



- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...